Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Bear Creek Watershed, Jackson County, Oregon

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: Pursuant Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); the Natural Resources Conservation Service Guidelines (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for Bear Creek Watershed, Jackson County, Oregon.

FOR FURTHER INFORMATION CONTACT: Bob Graham, State Conservationist, Natural Resources Conservation Service, 101 SW Main St., Suite 1300, Portland, Oregon 97204–3221, telephone (503) 414–3201.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional or national impacts on the environment. As a result of these findings, Bob Graham, State Conservationist, has determined that the preparation and review of an environmental impact statement is needed for this project.

The project concerns a plan for improved agricultural water management on irrigated lands to rectify water quality problems including fishery habitat, and for improved watershed protection. Alternatives under consideration to reach these objectives include conservation land treatment and improved water delivery systems for agricultural water management and fisheries enhancement.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Natural Resources Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. A meeting will be held as 8:00 am, Thursday, March 30, 1995, at the Red Lion Inn, 200 North Riverside, Medford, Oregon, to determine scope of the evaluation of the proposed action. Further information may be obtained from Bob Graham, State Conservationist, at the above address or telephone (503) 414–3201.

(This activity is listed in the Catalogue of Federal Domestic Assistance under No. 10.904-Watershed Protection and Flood Prevention-and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Dated: March 6, 1995.

Bob Graham,

State Conservationist.

[FR Doc. 95–6500 Filed 3–15–95; 8:45 am]

BILLING CODE 3210–16–M

Forms Under Review by Office of Management and Budget

March 10, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 690–2118.

Revision

- National Agricultural Statistics Service

Fruits, Nuts, and Specialty Crops
Business or other for-profit; Farms; 50,183 responses; 14,764 hours
Larry Gambrell (202) 720–5778

Extension

- Forest Service

Landownership Adjustments (35 CFR 254, Subpart A—Land Exchanges)
Individuals or households; Business or other for-profit; Not-for-profit institutions; 298 responses; 596 hours
Mike Williams (202) 205–1347

- Forest Service

Application for Permit; Non-Federal Commercial Use of roads
Restricted by Order
FS–7700–40
Business or other for-profit; 2,000 responses; 500 hours
David A. Badger (202) 205–1424

Larry K. Roberson,

Deputy Department Clearance Officer.

[FR Doc. 95–6506 Filed 3–15–95; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–810]

Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination: Disposable Pocket Lighters From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 16, 1995.

FOR FURTHER INFORMATION CONTACT: David Boyland or Susan Strumbel, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 482–4198 and 482–1442, respectively.

Final Determination

We determine that disposable pocket lighters from Thailand are being, or are

likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930 (the ''Act''), as amended. The estimated margins of sales at less than fair value are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the October 24, 1994 preliminary determination (59 FR 53414 (October 24, 1994)), the following events have occurred:

Between October 24 and October 28, 1994, we conducted verification of the questionnaire responses. On October 31, 1994, petitioner requested a public hearing. Respondent requested that the Department postpone its final determination in this investigation on November 2, 1994. On November 16, 1994, the Department published its notice of postponement of the final determination (59 FR 59211).

On February 1, 1995, petitioner filed a critical circumstances allegation. The Department issued a preliminary negative critical circumstances determination on March 3, 1994.

On February 13 and February 21, 1995, petitioner and respondent filed case and rebuttal briefs, respectively. On February 28, 1995, the Department held a public hearing.

Scope of the Investigation

The products covered by this investigation are disposable pocket lighters, whether or not refillable, whose fuel is butane, isobutane, propane, or other liquified hydrocarbon, or a mixture containing any of these, whose vapor pressure at 75 degrees Fahrenheit (24 degrees Celsius) exceeds a gage pressure of 15 pounds per square inch. Non-refillable pocket lighters are imported under subheading 9613.10.0000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Refillable, disposable pocket lighters would be imported under subheading 9613.20.0000. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written descriptions of the scope of these proceedings are dispositive.

Period of Investigation

The period of investigation (''POI'') is December 1, 1993 through May 31, 1994.

Critical Circumstances

Petitioner alleged that critical circumstances exist with respect to imports of disposable lighters from Thailand. In our determination on March 3, 1995, pursuant to section 733(e)(1) of the Act and 19 CFR 353.16, we analyzed the allegations using the Department's standard methodology.

On March 6, 1995, both petitioner and respondent submitted comments with regard to the Department's preliminary negative critical circumstances determination. In addition to submitting general comments, petitioner also provided Port Import and Export Reporting Services (''P.I.E.R.S.'') data (see, Exhibit C of petitioner's March 6, 1995 submission) in order to show that Thai Merry's shipments have dropped off dramatically since the Department's preliminary affirmative determination of sales at less than fair value (''LTFV''). According to petitioner, the decline in imports of subject merchandise from Thailand subsequent to the post-petition period indicates that critical circumstances exist.

With respect to the additional information supplied by petitioner, we note that the Department's analysis of critical circumstances compared data covering December 1, 1993 through April 30, 1994 (the ''pre-petition period'') with data covering May 1, 1994 through September 30, 1994 (the ''post-petition period''). As noted in the preliminary negative critical circumstances determination, the Department considered the post-petition period to be the first day of the month of initiation through the period immediately prior to the preliminary determination of sales at LTFV. While the data submitted by petitioner show that shipments have declined subsequent to the Department's preliminary LTFV determination, our analysis, and the critical circumstances allegation itself, is based on respondent's actions prior to the preliminary LTFV determination. Accordingly, while we have examined the additional information provided by petitioner, it does not alter our original analysis (see, February 27, 1995 Memorandum to Susan H. Kuhbach, Director, Office of Countervailing Investigations from David R. Boyland, Case Analyst, Office of Countervailing Investigations). In the absence of information that would alter our original analysis, we determine that critical circumstances do not exist.

Class or Kind of Merchandise

The Department considers standard and child-resistant lighters to be one class or kind of merchandise (see, Interested Party Comments, Comment 1).

Product Comparisons

We have continued to treat standard lighters sold in the home market as similar to child-resistant lighters, and identical to standard lighters sold in the United States (see, Interested Party Comments, Comment 2). For the U.S. sales compared to home market sales of similar merchandise, we made an adjustment, pursuant to 19 CFR 353.57, for physical differences in merchandise.

Level of Trade

For the preliminary determination, respondent argued that, since Thai Merry sells to large national distributors in the United States, the home market sales used for comparison purposes should be limited to those sales made to the single national distributor in the home market. The Department, in its preliminary determination, stated that the information submitted by the respondent did not justify distinguishing between the national distributor in the home market and other distributors.

Although the Department gave respondent the opportunity to provide additional information to substantiate its claim that there is a distinct national distributor level of trade in the home market, respondent declined to do so. Moreover, at verification, we learned that respondent's division of customers into either the retail level of trade or the distributor level of trade was based solely on the volume of lighters purchased by home market customers.

The Department analyzes levels of trade based on the differences in functions performed by the seller or differences in the category of customer. In this case, however, respondent based its level of trade claim solely on differences in quantities purchased. Therefore, we have not performed a level of trade analysis.

We note, however, that there are substantial differences in quantities ordered by U.S. and home market customers. Moreover, within the home market, sales are made in a wide range of quantities and with larger quantities being sold at lower prices. In accordance with 19 CFR 353.55, we have identified the largest home market transactions and have compared those with sales to the United States.

Fair Value Comparisons

To determine whether Thai Merry's sales for export to the United States were made at less than fair value, we compared the United States price (''USP'') to the foreign market value (''FMV''), as specified in the ''United States Price'' and ''Foreign Market Value'' sections of this notice.

We made revisions to Thai Merry's reported data, where appropriate, based on verification findings.

United States Price

Because Thai Merry's U.S. sales of disposable pocket lighters were made to unrelated purchasers prior to importation into the United States, and the exporter's sales price methodology was not indicated by other circumstances, in accordance with section 772(b) of the Act, we based USP on the purchase price (''PP'') sales methodology. We calculated Thai Merry's PP sales based on packed, CIF prices to unrelated customers in the United States.

We made deductions to the U.S. price, where appropriate, for foreign inland freight, foreign brokerage/handling expenses, marine insurance, and ocean freight. In calculating the imputed U.S. credit expense, we used the borrowing rate in the United States on short-term dollar-denominated loans (see, Interested Party Comments, Comment 11). For a further discussion of the Department's treatment of U.S. credit expense, please see Memorandum to Barbara R. Stafford, Deputy Assistant Secretary, Investigations from Susan H. Kuhbach, Director, Office of Countervailing Investigations, (September 26, 1994) on file in room B–099 of the U.S. Department of Commerce.

In accordance with Section 772(d)(1)(B) of the Act, we made an addition to the U.S. price for the amount of import duties imposed but not collected on inputs. We also made an adjustment to U.S. price for VAT taxes paid on the comparison sales in Thailand, in accordance with our practice, pursuant to the Court of International Trade (''CIT'') decision in *Federal-Mogul, et al* versus *United States,* 834 F. Sup. 1993. See, Preliminary Antidumping Duty Determination and Postponement of Final Determination; Color Negative Photographic Paper and Chemical Components Thereof from Japan, 59 FR 16177, 16179 (April 6, 1994), for an explanation of this tax methodology.

Foreign Market Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of subject merchandise to the volume of third country sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. As a result, we determined that the home market was viable.

We calculated FMV based on delivered prices, inclusive of packing, to customers in the home market. From the delivered price, we deducted home market packing and added U.S. packing costs.

Pursuant to section 773(a)(4)(B) of the Act and 19 CFR 353.56(a)(2), we made circumstance-of-sale-adjustments for differences in movement charges between shipments to the United States and shipments in the home market. We also made circumstance-of-sale-adjustments for differences in advertising expenses, and direct selling expenses, including payments made by Thai Merry to a third party. With respect to the home market credit expense, we have attributed this expense to only those home market sales identified as ''credit sales.'' Additionally, we note that respondent provided a value-based allocation for advertising expense in its home market sales listing. We have substituted respondent's value-based allocation with a per unit advertising expense for the final determination.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York.

Verification

As provided in section 776(b) of the Act, we verified information provided by the respondent using standard verification procedures, including the examination of relevant sales, cost and financial records, and selection of original source documentation used in making our final determination.

Interested Party Comments

Comment 1: Respondent argues that since standard lighters can no longer be imported into the United States because of a Consumer Product Safety Commission (''CPSC'') regulation which came into effect after the POI, standard lighters and child-resistant lighters should be considered two separate classes or kinds of merchandise. In support of its arguments, respondent has outlined differences between standard and child-resistant lighters relevant to the *Diversified Products* criteria (see, *Diversified Product Corporation* versus *United States,* 582 F. Supp. 887 CIT 1983). These differences are summarized as follows: (1) The differences in physical characteristics are minor. However, the fact that child-resistant lighters can be legally imported, while standard lighters cannot, makes these differences significant, according to respondent; (2) with respect to ultimate use, respondent notes that the types of lighters are in fact different since the child-resistant lighter is intended to be used only by persons mature enough to understand the danger associated with the lighter; (3) as regards, expectation of the ultimate purchaser, respondent argues that, while both types of lighters can produce flames with which to light something, the child-resistant lighter is expected to be safer; (4) with respect to channels of trade, respondent notes that once the inventories of standard lighters imported prior to July 12, 1994 have been sold, the channels of trade of the two types of lighters will be distinct because only one will exist legally (child-resistant) while the other will not (standard); (5) as regards advertising and display, respondent argues that child-resistant lighters are marketed as not only disposable lighters, but child-proof products which marketing officials promote as such. Additionally, according to respondent, the CPSC regulation requires that the two types of lighters be displayed differently and that once inventories of standard lighters are sold, they will not be displayed or advertised anywhere; (6) with respect to cost, respondent notes that the cost of producing the child-resistant lighters is legally significant because the additional cost allows the lighters to be exported to the United States. Also, with respect to cost, respondent argues that the price of standard and child-resistant lighters are sharply different.

Petitioner argues that both standard and child-resistant lighters will be sold in competition with one another until the large stockpiled supply of standard lighters imported prior to the CPSC ban is exhausted. Petitioner argues that both lighters are functionally equivalent, their physical characteristics are almost identical, the ultimate use and expectation of the consumer is the same, and that child-resistant and standard lighters are sold through the same channels of distribution, with the same advertising and display. Additionally, petitioner points out that the difference in price between the standard and child-resistant lighter is distorted because standard lighters are being dumped, as admitted in respondent's case brief. Finally, petitioner states that the cost differences between the two types of lighters is insufficient to support a class or kind distinction.

DOC Position: Regarding the class or kind issue, the Department has determined that there is only one class or kind of merchandise.

As regards physical characteristics, all parties agree, and the record supports, that there is no distinct difference between standard and child-resistant lighters. With respect to cost, the

Department has already determined that it can match child-resistant lighters sold in the United States to standard lighters sold in the home market with a difference in merchandise adjustment (''difmer'') (*i.e.*, the difference in variable costs between the child-resistant lighter and the standard lighter does not exceed 20 percent of the total cost of manufacturing of the child-resistant lighter). Therefore, we find that the difference in cost is not significant enough to support a class or kind distinction. With respect to ultimate use, and expectations of the ultimate purchaser, we note that, while child-resistant lighters have a safety feature and the standard lighter does not, the primary function of standard and child-resistant lighters is the same. Additionally, the expectations of the consumer with regard to the utility of child-resistant lighters and standard lighters are the same. Also, regardless of the CPSC ban, standard and child-resistant lighters are sold through the same channels of trade. Finally, while we note that the advertising and display of standard and child-resistant lighters may be marginally different because of the child-safety feature, the differences in advertising and display are minor and do not outweigh the fact that no differences are evident in the other *Diversified Products* criteria, as noted above.

Respondent also argues that the import restriction distinction between the two types of lighters is a ''clear dividing line,'' as that term is used by the Department in Final Affirmative Less Than Fair Value Determination: Sulfur Dyes, Including Vat Sulfur Dyes, from the U.K. (''Sulfur Dyes From the U.K.'') 58 FR 3253 (January 8, 1993)). In Sulfur Dyes From the U.K., the Department stated that ''when examining differences in physical characteristics in the context of class or kind analysis, the Department looks for 'clear dividing lines' between product groups, not merely the presence or absence of physical differences.'' (58 FR at 3254). According to respondent, because standard lighters may no longer be imported, the *Diversified Products* factors vis-a-vis child-resistant lighters are all diametrically different.

Except for the import restriction associated with standard lighters, respondent has provided no compelling reason to divide these products into separate classes or kinds of merchandise. While indicating that a ''clear dividing line'' is necessary to make a class or kind distinction, the Department went on to state in Sulfur Dyes from the U.K. that multiple classes or kinds did not exist because the Department did not find ''clearly defined differences in any of the *Diversified Products* criteria.'' In the instant case, the differences presented by respondent to support its *Diversified Products* analysis, as discussed above, are not compelling. Therefore, we continue to find standard and child-resistant lighters to be one class or kind of merchandise.

With respect to using an average-to-average methodology, we note that, except in the most extraordinary circumstances, the Department's long-standing practice is to compare individual U.S. transactions with a weighted average FMV (see, 19 CFR 353.44(a)).

As to respondent's point that an average-to-average methodology will be required under the new antidumping law, we note that this final determination is being made pursuant to the previous law, which does not require an average-to-average comparison. Finally, with respect to applying a zero margin to child-resistant lighters, we note that the Department applies a dumping margin on the basis of a class or kind of merchandise, not on a product-specific basis (see, section 731 of the Tariff Act of 1930, as amended).

Comment 2: Petitioner objects to the Department's preliminary determination that child-resistant lighters can be compared to home market sales of standard lighters. Petitioner argues that, based on the differences in the cost of manufacture and commercial value, standard and child-resistant lighters should not be considered ''similar.'' According to petitioner, information that it submitted shows that the two types of lighters are not ''approximately equal in commercial value.'' Thus, petitioner argues that the requirements of 19 U.S.C. 1677(16)(B)(iii) have not been met. Instead, the Department improperly relied solely on the physical characteristics of the merchandise in making its preliminary determination. Furthermore, petitioner argues that the commercial value aspect of 19 U.S.C. 1677(16)(b)(iii) is designed for cases such as the instant one in which the differences in overall cost and commercial value result from the mandatory child-safety requirements. Such differences are attributable to capital expenditures for research and development. Petitioner argues that the Department should at least factor in the high cost of developing the safety mechanism when making its such or similar analysis.

Respondent argues that there is no support for using cost in determining whether the two lighters can be considered similar, except to the extent that the Department will generally not compare products where the difmer exceeds 20 percent of the cost of manufacturing of the U.S. product. Moreover, respondent argues that the Department's preliminary determination was consistent with past cases and the CIT's ruling in *United Engineering and Forging* versus *United States*, 779 F. Sup. 1375, 1381 (1991)).

DOC Position: We agree with respondent. The Department places little weight on the commercial value criterion in determining what constitutes such or similar merchandise (see, Final Results of Administrative Review: Certain Forged Steel Crankshafts from the United Kingdom , 56 FR 5975 (February 14, 1991)), and Final Determination of Sales at Less Than Fair Value: Certain Portable Electric Typewriters From Singapore, 58 FR 43334 (August 16, 1993)). Instead, the Department focuses on the similarity of the physical characteristics, as evidenced in the Department's such or similar determination in this investigation. The Department's position in this regard has been upheld by the CIT in *United Engineering.*

In this case, child-resistant and standard lighters closely resemble each other in terms of their physical characteristics. Moreover, while the commercial value of the two products (as reflected in their prices) differed, the difference was not large (in absolute terms) and decreased over time. Therefore, we have continued to find that child-resistant lighters are similar to standard lighters.

Except for our general practice of limiting difmers to those which do not exceed 20 percent of the cost of manufacturing the good sold in the United States, we do not consider cost in determining what constitutes similar merchandise. We note that the alleged research and development costs referred to by petitioner would not be included in the difmer, which includes only variable manufacturing costs.

Comment 3: Petitioner argues that Thai Merry gives quantity discounts, which eliminates the need for a level of trade adjustment. Petitioner also argues that Thai Merry has been unable to determine which home market customers are retailers and which home market customers are distributors, and instead has simply relied on volume sold to distinguish between these levels. Additionally, petitioner notes that Thai Merry has been unable to substantiate its claim that the distributor level of trade should be sub-divided into distinct levels of trade. Thus, according to petitioner, all of Thai Merry's home

market sales should be found to be made at the same level of trade.

Respondent argues that petitioner is incorrect in stating that Thai Merry was unable to identify which customers were retailers or distributors. Respondent argues that the threshold it provided for dividing its customers into the two groups was conservative, *i.e.*, this threshold eliminates home market customers from the Department's LTFV comparison that are clearly not distributors. Additionally, some of those home market customers identified as distributors were in all likelihood retailers. Respondent argues that use of a threshold was necessary given the difficulty in identifying the exact level of trade of every home market customer. Finally, respondent argues that the Department is required to make comparisons at the same level of trade (see, 19 CFR 353.58) and there is a significant dividing line between the quantities purchased by the retail customers in the home market and the quantities purchased by the large national distributors in the United States. Therefore, the Department should rely on sales to home market distributors, as defined by respondent, in making its comparisons to U.S. sales.

DOC Position: While this issue has been framed in the context of level of trade, the Department finds that the appropriate approach is to identify home market sales that are in quantities comparable to U.S. sales. We note that there is no home market customer who orders in quantities approaching the average quantities ordered by U.S. customers. Nevertheless, we examined the data and found that average transaction prices varied with quantity. Therefore, we have selected for comparison purposes large quantity home market transactions (see, March 8, 1995 Memorandum to Barbara R. Stafford, Deputy Assistant Secretary, Investigations from David Boyland, Case Analyst, Office of Countervailing Investigations).

Comment 4: Petitioner argues that the Department's verification report indicates that the U.S. price changed between the purchase order date and the invoice date. As such, petitioner argues that the invoice date should be considered the date of sale.

Respondent argues that the Department's verification report is misleading because, while the invoice date is Thai Merry's first record of the sale price, previously submitted information shows that the price and quantity are recorded at the time of the purchase order. Additionally, respondent argues that the ''revisions'' referred to in the verification report were prospective changes in price, as opposed to price changes to orders already made.

DOC Position: The verification report states that ''during our examination of U.S. sales completeness...the standard and child-safety lighter per-unit prices were applied consistently throughout the POI with several upward price revisions occurring in the latter half of the POI.'' ''Revisions,'' in the context of the verification report, referred to assumed increases in the negotiated price, as opposed to a change in price between the purchase order date and the invoice date.

The verification report also states that the first ''written'' record generated by Thai Merry of the negotiated price is the invoice. While respondent has cited to a Purchasing and Payment Records spreadsheet maintained by U.S. customers, this information does not by itself prove when the purchase price was first recorded. The spreadsheet includes Thai Merry's invoice number and hence was generated sometime after Thai Merry's invoice information, including unit price, was available to the U.S. customer. Therefore, it is not correct to say, as respondent claims, that this information proves the price was recorded at the time of the purchase order.

Given the fact that respondent's price negotiations with its U.S. customers were unrecorded, it was not possible to ''verify'' that the purchase order date was the date on which both price and quantity were fixed. The information provided by respondent indicates that it is reasonable to assume that the price was established prior to the purchase order and that the purchase order established the quantity. However, as the Department noted in Certain Stainless Steel Butt-Weld Pipe and Tube Fittings From Japan; Final Results of Antidumping Duty Administrative Review, 59 FR 12240, 12241 (March 16, 1994)), the date of sale is evidenced by the ''first document which systematically records agreement as to price and quantities * * * [m]oreover the invoice date represents an accurate, reasonable, consistent methodology to determine the date of sale.'' In this case, the appropriate date of sale is the invoice date because it is the first written record generated by Thai Merry of both price and quantity. Additionally, this date was subject to verification during our examination of the U.S. sales listing.

Comment 5: With respect to certain sales at the end of the POI, respondent argues that a fire at one of Thai Merry's facilities made it impossible to fill the entire May 15, 1994 purchase order. According to a May 26, 1994 letter from the U.S. customer to Thai Merry, the customer notified Thai Merry of a certain volume of lighters that would be accepted for shipment. Respondent argues that the amount of child-resistant lighters ultimately shipped pursuant to both the May 15, 1994 purchase orders and the June 15, 1994 purchase orders matched the volume accepted by the U.S. customer in the May 26, 1994 letter to Thai Merry. Accordingly, since these shipments were accepted during the POI (*i.e.*, May 26, 1994), the sales reflected in the June 15, 1994 purchase orders should be considered POI sales. In response to the Department's verification report, which indicates that the unfilled portion of the May 15, 1994 purchase order was not accounted for in the subsequent June 15, 1994 purchase orders, respondent argues that this is due to the fact that standard lighters ordered on May 15, 1994, could not be re-ordered because of the pending CPSC ban.

Petitioner argues that respondent's explanation should be rejected because (1) the terms of the purchase could be changed up to the invoice date, (2) there is no clearly established connection between the June 15 and May 15 purchase orders, and (3) the May 26, 1994 letter discusses a forthcoming purchase order which was not found to exist.

DOC Position: As noted in Comment 5, the Department is considering the invoice date to be the date of sale. Accordingly, only those sales invoiced during the POI will be considered POI sales for purposes of the final determination.

Comment 6: Petitioner argues that sales by Thai Merry Hong Kong (''TMHK'') to the United States should be included in the Department's LTFV comparison. Petitioner notes that the factors the Department considers when determining if the sales of two parties should be collapsed include: (1) whether the companies are closely intertwined; (2) whether transactions take place between the companies; (3) whether the companies have similar types of production equipment, such that it would be unnecessary to retool either plant's facilities before implementing a decision to restructure either company's manufacturing facilities; and (4) whether the companies involved are capable, through their sales and production operations, of manipulating prices or affecting production decisions (see, Final Determination of Sales at Less Than Fair Value: Certain Granite Products from Italy, 53 FR 27187 (July 19, 1988)). Petitioner argues that the

longstanding business relationship and the continued use of the Thai Merry name indicate that the relationship between the two companies did not end subsequent to Thai Merry's gradual sale of its ownership interest in TMHK. Petitioner argues that the relatedness issue is only one prong in the test used by the Department in determining whether to collapse sales. When the preceding factors are combined with the fact that the two companies are capable of price manipulation, it is clear that TMHK's sales to the United States should be included in the calculation of FMV. Petitioner argues that this potential to manipulate prices is the primary factor in determining whether TMHK's sales should be included in FMV and that the facts in this case show that there was price manipulation.

Respondent argues that section 771(13) of the Tariff Act of 1930, 19 U.S.C. 1677(13), governs the determination of ''related parties.'' Under this section of the statute, the Department has established a test under which parties will not be considered related unless ownership is greater than five percent. Respondent argues that since Thai Merry has no ownership interest in TMHK, as shown at verification, the two parties are not related. Respondent also argues that the evidence provided by petitioner for collapsing the two parties is unconvincing because: (1) The similarity in names between Thai Merry and TMHK is merely cosmetic, and in fact TMHK has changed its name, (2) buyers and sellers typically have frequent business transactions, and (3) the price TMHK charged Thai Merry's U.S. customer is not unusual because unrelated parties often sell similar products for similar prices.

DOC Position: We note that the Department only collapses sales under section 773(13) of the statute if the parties are related. Since Thai Merry has no ownership interest in TMHK, the Department has not considered TMHK's sales to the United States for purposes of calculating the margin.

Comment 7: Petitioner argues that because of the nature of payments by Thai Merry to Thai Merry America (''TMA'') (*i.e.,* a specific amount based on each U.S. sale), and because of the type of assistance being provided by TMA (*i.e.,* production consulting, research and development), the payments to TMA should be treated as a direct selling expense. Petitioner argues that the payments to TMA were, in part, for research and development for the child safety lighter. Thus, the payments to TMA were tied to the sale of a specific product line. According to petitioner, the other assistance provided by TMA, for example, production management, can also be tied directly to the sale of child-resistant and standard lighters because, in the absence of this assistance and the costs associated with them, these products would not have been manufactured. Finally, petitioner argues that it is precisely because these payments are directly tied to U.S. sales that a circumstance-of-sale adjustment is necessary.

Respondent argues that the TMA payments, as characterized by petitioner, indicate that these payments were related to production, as opposed to sales. While these payments resemble commissions, they are actually G&A expenses that do not qualify for a circumstance of sale adjustment.

DOC Position: Before determining how to treat this payment, we examined the payment arrangement between Thai Merry and TMA. Under this arrangement Thai Merry's ultimate payment to TMA is based on total U.S. sales. The services provided by TMA consist of production consulting, research and development, and market research. Because the payments to TMA are not connected with sales activity in the United States, we do not view them as commissions. However, since the payments to TMA are based on each U.S. sale, and calculated as a percentage of each U.S. sale, we consider these payments to be a direct U.S. selling expense. As a consequence, for purposes of the final determination, we have added these payments to FMV.

Comment 8: Respondent argues that the incentive bonuses paid to home market salesmen were not commissions. According to respondent, this is because these payments are not tied to the number or value of sales. Respondent argues that this is evidenced by the fact that Chamber (the home market selling arm of Thai Merry) does not keep records of sales per salesperson. Additionally, respondent notes that there is no correlation between the amount of incentive bonus paid and the value of sales during the previous month; *i.e.,* if the bonus was in fact a commission based on the value of sales, one would expect that when the value of sales dropped the subsequent amount of incentive bonuses paid would also drop. This was not the case.

DOC Position: Based on our review of the information, we see no correlation between home market sales and the ''incentive bonuses'' paid to Chamber's salesmen. The absence of an observable correlation or relationship between sales and incentive bonuses supports respondent's claim that these payments are not commissions. Therefore, for the final determination, we have determined that these payments are not commissions.

Comment 9: Petitioner argues that for the final determination the Department should apply the credit expense to only those home market sales identified as ''credit sales.''

DOC Position: We agree and have made this correction.

Comment 10: Petitioner argues that the home market freight expense should have been allocated on a weight or per-unit basis, instead of using a value-based factor. Given customary freight rate structures, it is unreasonable, according to petitioner, to allocate freight expenses based on the value of subject merchandise. Finally, given respondent's refusal to cooperate in providing a non-value-based freight amount, as well the Department's preference for not including depreciation as part of the freight expense, the Department should use the per-unit freight cost incurred by Thai Merry on direct sales shipped in the home market, as best information available (''BIA'').

Respondent argues that it was not possible to provide a weight-based or per-unit cost for home market inland freight because home market deliveries include subject and non-subject merchandise. Hence, there is no common denominator with which to perform an allocation of cost. Additionally, a weight-based calculation is not possible because records are not kept with respect to total weight shipped. Respondent also argues that there have been cases in which the Department has accepted a value-based allocation (see, Antifriction Bearing (Other than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom, 58 FR 39729 (July 26, 1993)).

DOC Position: We agree with respondent. The Department verified elements of respondent's value-based freight allocation. This allocation incorporated expenses, including depreciation, which were directly related to Chamber's transportation costs. The allocation involved the appropriate costs and therefore appeared to be reasonable. As such, we have continued to use a value-based factor for the final determination.

Comment 11: Petitioner argues that, in this case, the use of a U.S. interest rate to calculate the U.S. credit expense does not represent ''commercial reality.'' According to petitioner, since Thai Merry has no loans in U.S. dollars and, therefore, finances all of its operations

in Thai baht, the actual credit expense to Thai Merry is a home market borrowing expense. Petitioner argues that, if the Department must use a U.S. interest rate, it should at least impute a credit expense based on a Thai interest rate for the ''time on the water'' period between shipment date and payment date.

Respondent argues that, with respect to the U.S. credit expense calculated at the preliminary determination, the Department correctly interpreted *LMI–LA Metalli Industriale, S.p.A.* v. *United States,* 912 F. 2d. 455, 460 (Fed. Cir. 1990)) (''*LMI*''). Respondent argues that *LMI* was not a fact-specific decision in which the respondent company's dollar loans justified the use of a U.S. dollar interest rate. Rather, according to respondent, the Court focused on the availability of a lower borrowing rate. Respondent argues that the Department reasonably found the borrowing rate to be based on the currency of sale at the preliminary determination and should continue to use a dollar interest rate for the final determination.

DOC Position: While Thai Merry had liabilities denominated solely in baht, some of its assets (*e.g.,* receivables pursuant to U.S. sales) were denominated in dollars. As such, the cost to Thai Merry is the cost it would incur in discounting a dollar receivable which would be based on a dollar interest rate.

Because we believe that our original decision was correct and is supported by *LMI,* we have continued to use a U.S. dollar interest rate to calculate the U.S. credit expense.

Comment 12: Respondent argues that the methodology employed by the Department at the preliminary determination, while consistent with the decision in *Federal-Mogul, et. al.* v. *United States,* (''*Federal Mogul*'') 834 F. Supp. 1391 (CIT)), is inconsistent with the expectation of tax neutrality under GATT and ignores the methodology sanctioned by a higher court, the U.S. Court of Appeals for the Federal Circuit (see, *Zenith Corp.* v. *United States,* (''*Zenith*'') 988 F.2d 1573, 1583 n.4 (Fed. Cir, 1993) which stated that it was appropriate for the Department to adjust U.S. price by the amount of VAT actually paid on home market sales. Because the adjustments pursuant to *Federal Mogul* exaggerate existing margins, the use of this methodology is in violation of GATT. Respondent cites Article VI(1) and Article VI(4) of the GATT and Article 2(6) of the Agreement on Implementation of Article VI of the GATT, as unambiguously requiring that differences in the level of indirect taxes shall not create/inflate dumping margins. Petitioner argues that respondent's reliance on footnote 4 of *Zenith* is incorrect because the Court of International Trade found that ''footnote 4 (*of Zenith*) is clearly at odds with Zenith and the language of the statute and is *dicta.*'' Petitioner states that in *Avesta Sheffield, Inc. et. al.* v. *United States,* Slip Op. 93–217 (CIT Nov. 18, 1993) the court also found footnote 4 of *Zenith* to be *dicta.* Additionally, with respect to respondent's argument that the Department's VAT methodology is in conflict with Article VI(4) of GATT, petitioner argues that under a proper interpretation of this article, in which a multiplier effect only occurs in the presence of a dumping margin, the Department's methodology fully comports with GATT.

DOC Position: We agree with petitioner. The VAT methodology used at the preliminary determination has been used by the Department for all recent antidumping determinations and is in accordance with both the statute and the GATT. Accordingly, for the final determination we have continued to use the VAT methodology used for the preliminary determination (see, Preliminary Antidumping Duty Determination and Postponement of Final Determination; Color Negative Photographic Paper and Chemical Components Thereof from Japan, 59 FR 16177, 16179, (April 6, 1994)).

Comment 13: Petitioner states that it is not clear whether the Department verified that all of Thai Merry's advertising expenses were related to lighter sales. Additionally, it is also not clear, according to petitioner, whether Thai Merry's general ledger distinguishes between advertising for lighters and advertising for scouring pads. Petitioner notes that only advertising expenses associated with the sale of disposable lighters should be used to adjust the FMV.

Respondent argues that the Department examined Thai Merry's advertising expense adjustment and found no indication that the company incurs advertising expense for anything other than the sale of lighters. Accordingly, the Department should utilize the verified figure for home market advertising expenses in the final determination.

DOC Position: We agree with respondent. During our verification of Thai Merry's advertising expenses, we noted no information indicating that Thai Merry paid for any advertising other than advertising for lighters. Accordingly, we have used the advertising expense, as verified, for the final determination.

Comment 15: Petitioner argues that sales of imprinted and non-imprinted Aladdin lighters, as well as wrapped lighters, should be used in the calculation of FMV without a difmer adjustment because the physical differences between these lighters and standard lighters are minor. According to petitioner, respondent's argument that wrapped and imprinted lighters should not be used in the FMV calculation because there are no U.S. sales of such lighters is dubious since respondent has already argued that standard and child-resistant lighters are one such or similar category.

Respondent argues that it is a basic tenet of the antidumping law that U.S. sales should be matched to identical sales in the home market or, if an identical product is unavailable, the most similar home market product should be compared to the U.S. sale. At verification, respondent was able to identify home market sales of imprinted and non-imprinted Aladdin lighters, as well as wrapped lighters. Since imprinted and wrapped lighters are neither identical nor most similar to U.S. sales, they should be excluded from the Department's LTFV comparison.

DOC Position: We agree with respondent. Petitioner seems to argue that imprinted and wrapped lighters sold in the home market should be matched to non-imprinted, non-wrapped lighters sold in the U.S. This is in spite of the fact that merchandise which is identical to the merchandise sold in the U.S. is being sold in the home market. While imprinted and wrapped lighters are within the same such or similar category, they are not identical or most similar to the merchandise sold in the United States. Therefore, we have excluded imprinted and wrapped lighters from the calculation of FMV for the final determination.

Comment 16: Petitioner argues that the Department should find critical circumstances to exist. According to petitioner, when May 1994 shipments are excluded (*i.e.,* the period which the Department referred to as a unique ''spike''), Thai Merry's post-petition shipments increased by an amount that can still be considered massive under 19 CFR 353.16(f)(2). Petitioner argues that critical circumstance should be found to exist since the Department focused on the effect of the CPSC ban, and that removing this period for comparison purposes still yields a post-petition period increase which is ''massive.'' Additionally, because it received notification of the Department's preliminary negative critical

circumstances determination after close of business (''COB'') on March 3, 1995 and the deadline for submitting comments to the determination was March 6, 1995, petitioner indicates that it was not allotted ''sufficient time'' to comment on the Department's analysis.

Respondent states that, while the Department could have based its negative preliminary critical circumstances determination on factors other than the CPSC ban and its effect on shipments, the Department correctly found that critical circumstances do not exist.

DOC Position: We first note that the Department's preliminary negative critical circumstance determination was not based solely on the effect of the CPSC ban on Thai Merry's shipments during the post-petition period. In making the negative preliminary critical circumstances determination, the Department stated that its decision was ''[b]ased on (1) an evaluation of apparent domestic consumption during the pre- and post-petition period, as calculated by petitioner, (2) Thai Merry's share of domestic consumption during the pre- and post-petition periods, (3) the shipment data provided by respondent as compared to previous periods, and (4) consideration of the circumstances surrounding the large increase in shipment in May 1994 * * *'' (see, page 7 of unpublished version of the Department's March 3, 1995 preliminary negative critical circumstances **Federal Register** notice). Because no additional information has been provided by petitioner that conflicts with our preliminary determination, we continue to find that critical circumstances do not exist.

With regard to petitioner's claim that it did not have sufficient time to analyze the Department's preliminary negative critical circumstances determination, we note that petitioner did not request additional information under administrative protective order (''APO'') (*i.e.,* the Department's February 27, 1995 analysis memo) with which to make its analysis until late in the afternoon of March 6, 1995 (*i.e.,* the deadline date). Additionally, we note that on March 6, 1995, the Department offered petitioner an extension for filing comments on the preliminary negative critical circumstances determination if requested. Petitioner specifically declined to make an extension request (see, March 7, 1995 memo to case file from David R. Boyland, Case Analyst, Office of Countervailing Investigations).

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of disposable lighters, that are entered, or withdrawn from warehouse, for consumption on or after October 24, 1994, the date of publication of our affirmative determination in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amount by which the FMV of the merchandise of this investigation exceeds the USP, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage
Thai Merry	25.04
All Others	25.04

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will now determine, within 45 days, whether these imports are materially injuring, or threatening material injury to the U.S. industry. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification to Interested Parties

This notice also serves as the only reminder to parties of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: March 8, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–6523 Filed 3–15–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 030795B]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for a scientific research permit (P418A).

SUMMARY: Notice is hereby given that Mason Weinrich of the Cetacean Research Unit, P.O. Box 159, Gloucester, MA 01930, has applied in due form for a permit to take humpback whales (*Megaptera novaeangliae*), fin whales (*Balaenoptera physalus*), right whales (*Eubalaena glacialis*), and sei whales (*Balaenoptera borealis*) for the purpose of scientific research.

DATES: Written comments must be received on or before April 17, 1995.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910, (301/713–2289);

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (508/281–9250).

Written data or views, or requests for a public hearing on this request, should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222).

The applicant seeks authorization to take annually by harassment a maximum of 400 individual humpback